IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.4047 OF 2004

Pundalik Karbhari Mali
@ Pund ..Petitioner

Vs.

Pandharinath Kashinath
Pund ..Respondent

....

Mr.V.Z.Kankaria for Petitioner
None for Respondent

....

CORAM : B.H.MARLAPALLE,J.

DATE : MARCH 22,2005

P.C.:

1. Mr.Kankaria, the learned counsel for the petitioner who is the plaintiff in R.C.S.No. 158 of 1997. In the said suit, he had submitted an application at Exh.32 for measurement of the land in Gat No. 88 and 89 by the Court Commissioner and the said application was allowed. T.I.L.R. Niphad carried out measurement and submitted his report along with a map to the trial Court on 17.2.2003. On or about 30.6.2003 the plaintiff submitted yet another application at Exh.60 disputing the report submitted by T.I.L.R. and praying for remeasurement of Gat Nos.88 and 89 by the District Superintendence

of Land Records by paying Nimtana fees. This application has been rejected by order dated 31.1.2004.

2. The appointment of the Court Commissioner at the first instance was at the request of the petitioner himself by way of application at Exh.32 and the measurements have been carried out by T.I.L.R. Niphad. The plaintiff has liberty to examine the Court Commissioner to prove the unreliability of the report as well as the map submitted along with it. The trial Court rightly observed that the plaintiff filed application at Exh.60 for delaying the trial of the suit. The discretionary powers for remeasurements have been refused to be exercised by the trial Court and rightly so. No interference is called for in the impugned order and therefore, the petition is rejected summarily.

[B.H.MARLAPALLE,J.]